

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

THOMAS J. SWIECH,
Plaintiff,

v.

FRED LOYA INSURANCE COMPANY,
Defendant.

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No. _____

NOTICE OF REMOVAL

Comes now LOYA INSURANCE COMPANY, Defendant in the above entitled and numbered cause, hereinafter referred to as Defendant, and hereby gives notice to Plaintiff of the removal of this cause of action, and would show as follows:

1. On August 9, 2016, Plaintiff filed a lawsuit against FRED LOYA INSURANCE COMPANY in the Cause No. D-101-CV-2016-01854 in the County of Santa Fe, First Judicial District Court in Santa Fe, New Mexico. Service of Process and citation were requested upon the Defendant and served on Defendant on August 11, 2016 through the Superintendent of Insurance. A copy of Plaintiff's Complaint is attached as Exhibit "A." Therefore, the present notice of removal is timely pursuant to the date of service on the Defendant.

2. The above described action is one of which this Court has original jurisdiction under the provisions of Title 28, United States Code, Sections 1332a, 1441 and 1446, and is one which may be removed to this Court by the Defendants pursuant to said provisions in that it is a civil action involves a controversy which is wholly between citizens of different states. Plaintiff was at the time of commencement of the action and still is a citizen of the state of New Mexico, residing in Bernalillo County, New Mexico. The Defendant in the action was at the time of

commencement and still is an entity with its principal place of business. Defendant is neither a resident or citizen of the State of New Mexico.

3. Defendant asserts that the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, based on Plaintiff's allegations and alleged damages. Defendant need only include a "plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *See Dart Cherokee Basin Op. Co., LLC v. Owens*, 135 S.Ct. 547, 554 (2014). Plaintiff seeks punitive damages against Defendant due to allegations of bad faith insurance practices and unfair trade practices and seeks attorney's fees as a matter of right under a claim of breach of contract. *See Miera v. Dairyland Ins. Co.*, 143 F.3d 1337, 1340 (10th Cir. 1998). Plaintiff obtained a judgment in the district court concerning the underlying cause of action for damages for \$32,000 (\$20,000 recovery of punitive damages and \$12,000 in attorney's fees). Plaintiff alleges wanton, willful and bad faith acts on the part of the Defendant and seeks punitive damages pursuant to the insurance bad faith, breach of contract and unfair practices. Consequently, it is plausible, and likely, that Plaintiff's alleged damages exceed \$75,000.

4. Defendants promptly after the filing of this notice of removal gave proper notice of such filing to the Plaintiff and the District Clerk of the First Judicial District, Santa Fe, County, as evidenced by the proof of service of the same attached hereto.

WHEREFORE, Defendant prays that Cause No. D-101-CV-2016-01854 in the First Judicial District of Santa Fe, Santa Fe County, New Mexico and that the court enter an order of removal accordingly.

DATED this 9th day of September, 2016.

Respectfully submitted,

CRAIG, TERRILL, HALE & GRANTHAM, L.L.P.

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By: /s/ Andrew B. Curtis – filed electronically

Andrew B. Curtis – NM 121385

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent by e-filing and email, to the following persons on this the 9th day of September, 2016:

First Judicial District Clerk
Santa Fe, New Mexico

Richard J. Valle, Esq.
Matthew J. Zamora, Esq.
Carter & Valle Law Firm, PC
Attorneys for Plaintiff
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/s/ Andrew B. Curtis – filed electronically
Of the Firm